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ABSTRACT

Emphasizing the shortcomings of family law and their impact on divorced families and children, this report discusses a variety of topics related to divorce. Topics covered in the report include the following: (1) divorce statistics; (2) methods of resolving family disputes; (3) the marital contract; (4) the public's image of divorced fathers; (5) noncustodial mothers; (6) divorce as an industry; (7) the misuse of child abuse laws; and (8) child support. The report concludes that immediate reforms are needed for outdated marital and divorce laws, and includes a summary of proposed reforms. (MM)

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CRISIS IN FAMILY LAW

Children as Victims of Divorce

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TABLE OF CONTENTS

Introduction	1
The Six Year Marriage	2
Resolving Marital Disputes--Trial by Battle	2
The Divorce Industry	3
To Litigate or Mediate?	3
Is Our Marital Contract Obsolete?	4
A Child's Need for Two Parents	5
Thrust of New Laws	6
Child Support: By Administration or Litigation?	6
Income Redistribution	7
Two Classes of Children	8
Visitation Arrearage?	9
A New Look at Marriage and Dissolution	9
The Divorced American Father--a Pathetic Image	10
Poverty and Amorphous Rage	11
Contempt for Parents!	13
From a Mother's Knot to a Mother Not: Non-Custodial Mothers	14
Abuse of Child Abuse Laws	15
Who Pays?	16
Implementing Reform	17
The National Council Takes the Initiative	18
Notes and References	19

CRISIS IN FAMILY LAW

Children as Victims of Divorce

Introduction

This report discusses divorce statistics, methods of resolving family disputes, the marital contract, the public's image of divorced fathers, fatherhood, non-custodial mothers, the divorce industry, and other topics related to divorce. To the extent that these subjects affect children of divorce, they are the concern of the National Council for Children's Rights.

This report concludes that for the sake of our child's mental and financial well being there is an immediate need for reform of our marital and divorce laws. Specific laws and objectives of much needed changes are also included.

"Obtaining justice in too many of our courts takes too long and costs too much.... Unchecked, such a trend will cause the average citizen to tire, run out of money and finally turn away from the courts, cynical and disillusioned" states the American Bar Association (ABA) in a recent publication that covers all aspects of our justice system (1). Family law, the subject of this report, accounts for about one-half of all civil court cases (2). The total number of civil filings is estimated at 12 million per year, or one lawsuit for every 13 adults in the United States (3).

The current adversarial system produces unnecessary lawsuits, long delays, exorbitant costs, alienation of children from parents, and hostile feelings between ex-spouses. It penalizes and exploits victims of failing marriages, is emotionally disturbing to children, and diverts family dollars away from children.

Our family law system is in a state of crisis. It creates serious problems for children who are the innocent victims of a divorce that they did not ask for.

In our haste to dismantle our families, a highly profitable divorce industry and huge government bureaucracies, in the form of family courts, child support enforcement agencies, and a parent locator system (to name a few) have been created.

Many states have already initiated reform by offering an alternative to the adversarial system; others have not. Many states have instituted more equitable laws regarding marital property and custody; others have not. As a result of a 1984 congressional recommendation state governors are just now considering the non-financial needs of children of divorce, one of the primary needs being a relationship with both parents.

The Six Year Marriage

The divorce rate in the United States has more than tripled during the past 20 years (4). In 1982, with 230 million Americans in this country, 2,495,000 marriage licenses were issued to couples wishing to form families while another 1,180,000 American families were granted divorces. More than two divorces were granted to Americans every minute in 1982 (5).

In the early 1980's, about one-half of all marriages ended in divorce, with the median marriage lasting 6.8 years (6). Considering that it takes about 1 year to obtain a divorce, then the median marriage began to fail in less than 6 years!

As a result of the high divorce rate, the complex of professionals who service those seeking divorce has likewise grown to fill their needs. In many communities new courthouses, new mental health clinics, new social-service offices, and new child-support facilities are being constructed in order to keep up with the increasing numbers of litigating spouses and ex-spouses. More and more attorneys are finding financial rewards in family law (7). The high divorce rate, fueled by the adversarial process, has created a lucrative divorce industry and has impaired the parent-child relationship for over 1 million children each year (8).

Resolving Marital Disputes — Trial By Battle

Spousal disputes that occur when marriages fail may be resolved by two methods: the adversarial method, as through court litigation, and the non-adversarial method, as through mediation.

"Our current litigation system developed from the middle ages as a humane alternative to trial by battle. It is frequently called the adversary process...." (9) This antiquated system has its roots in resolving disputes by the outcome of a duel (10). In the adversarial process each litigant is forced to take opposing views and to prove their adversary is at fault.

For instance, in order to present an effective custody case, one spouse must convince the court that the opposing spouse is an unfit parent. Thus, allegations of child-abuse, drug-abuse, alchoholism, adultery, etc. often abound.

The invalidation of each spouse by the other produces anguish and irrevocable emotional trauma in spouses and their children. Thus, in custody cases, the adversary process is antagonistic to the needs of the children (11).

In contrast to the adversarial system, the non-adversarial method reduces and sometimes eliminates the need and cost for attorneys, private investigators, social workers, judges, court reporters, clerks, and administrators.

The ABA reports that "These (non-adversarial dispute resolution) programs are seen not only as effective ways in which to make the justice system more efficient and more responsive to citizens' needs, but also as grass roots community institutions in need of and meriting government support" (12).

The Divorce Industry

Chief Justice Warren E. Burger states that "The obligation of (the legal) profession is to serve as healers of human conflicts" (13). However, not all attorneys heed this advice.

Many attorneys encourage divorcing spouses to become enemies of each other and discourage spouses from using a conciliatory approach. The more heated the battle, the longer it will last and the more money the litigants will have to pay. "The modus operandi of lawyers.....[is to] seek minor adjustments rather than comprehensive solutions; delay as much as they can; and frequently lay the groundwork for future conflict (which ensures future business for themselves)...." states a George Washington University professor (14).

Without practical consumer-oriented marriage laws and without mandatory requirements for mediation, victims of failing marriages are exploited nationwide. Victims are intimidated by legal jargon, required to appear in frightening courts, made to feel guilty about their failure as spouses, and then forced to pay large sums to their attorneys, and possibly to their ex-spouses' attorney, as well.

In this manner, the adversarial form of divorce has become an industry that produces billions of dollars per year income for attorneys alone (15). Thus, the divorce industry diverts money that could have been spent on the children of failing marriages while further traumatizing spouses and their children.

To Litigate or Mediate?

Many people believe that the family-law court is the only means for divorcing spouses to resolve their disputes. Such disputes arise when issues such as child or spousal support, property distribution, child custody, or child access to his or her parents (visitation) cannot be resolved between the divorcing spouses.

Mediation as a form of dispute resolution is neither encouraged nor made a first option by most judges nor by most state laws. Since 1980 only 7 states have introduced laws that either require mediation or make it an option (16).

When mediation is used, a couple is expected to spend at least 3 sessions with the mediator. If spouses and ex-spouses reach an amicable, out-of-court agreement with or without a mediator, they are required to petition the court for approval of their agreements. Although the court is always involved in the approval of divorce and related agreements, the legal costs are considerably less when agreements are reached before appearing in court.

When mediation is used, it has been proven effective, inexpensive, less time consuming, and eliminates much emotional trauma (17). When divorcing spouses must resolve their disputes as adversaries, only the divorce industry wins.

Too few families and too few legislatures are aware of the benefits of mediation. Yet the number of mediators is growing rapidly, and state laws are being considered for the training and certification of mediators (18). In California, mandatory mediation and/or conciliation is required in all custody and visitation cases before the courts will hear the case (19). Should this approach be required nationwide for all marital issues in dispute?

Is Our Marital Contract Obsolete?

Can a better marital contract minimize disputes? We may get an answer to this question if we consider marriage a partnership and then look at other forms of partnership agreements.

When partnerships are formed for business purposes, it is a common practice to spell out the method for resolving disputes. Provisions for the dissolution of the partnership are also included. That is, business partners may agree on a mediator or arbitrator and on a method of dividing assets and liabilities in the event the business fails.

Partnership agreements are legal, encouraged by attorneys, and are upheld by our courts. In the event of a business failure, these agreements cause less anguish than if no such agreements existed. If disputes occur, or if the business fails, each partner is better prepared; they have already thought out and agreed to a solution.

However, in the case of marital contracts, the courts are slow to accept such an agreement (20). Their reason is steeped in tradition and not in logic. The marriage ceremony originated as a religious function and was performed by the church. The contract was based upon an "until-death-do-us-part" commitment. There was no intention of breaking the contract and no need to plan for the demise of the marriage.

The courts also argue that only they have the power to resolve marital disputes. They believe that divorce is promoted if spouses are permitted to spell out the terms of dissolution (21). Because of this, pre-marital agreements that concern children, and sometimes property rights, will not always be considered as legally binding (22).

But the court's autonomy on these issues is slowly eroding as new state and federal laws help resolve marital disputes, whether or not these issues are addressed by a marriage contract. Will new laws permit future marriage contracts, like partnership agreements, to contain all the terms of dissolution?

A Child's Need for Two Parents

Legal custody gives a parent the right to make decisions concerning the child's education, vacation, medical treatment, and religion. Physical custody relates to the child's residence. Living with a parent gives the child a close, loving, and personal relationship with that parent. Joint custody permits both parents to share the responsibilities and rewards of both legal and physical custody. A variety of joint-custody living arrangements are available which are suitable to the needs of minor children.

Thirty-three states now allow minor children of divorced parents the right to the love, guidance, and discipline of both parents through joint-custody laws (23). Despite joint-custody statutes and court rulings, customs are slow to change and many judges still favor mothers as the sole custodian, unless proven unfit (24). In 13 out of the 33 states, joint custody is the preference, unless it is not in the best interest of the child. In another 8 states, the highest court has said that joint custody may be awarded. This means that in 41 states either the legislature or the highest court favors joint custody.

In the states with joint custody, ex-spouses can share in raising children. That is, each parent retains a portion of legal and physical custody of the child through shared parenting. Thus, each spouse has the right to parent his or her child after divorce.

Should a state deny children the love and care of a nurturing parent because the child's parents are divorced?

Thrust of New Laws

The courts have begun to lose their grip on settling all divorce disputes. For example, 42 states have established community property or equitable property distribution laws that require an equal split of marital property (25), thereby reducing the need for litigation.

More recently, a spouse's pension fund has been considered as communal property (26). Upon divorce, either pension payments are partitioned, or a lump-sum payment is awarded to the non-pensioned ex-spouse. In addition, the New York state high court ruled that a medical license received by a man whose wife helped put him through school has a long term value that should be divided when the couple divorced (27).

Federal guidelines and laws for enforcing child-support and spousal-support payments, with a minimum of court procedures, are being developed and implemented (28). Additionally, laws regarding access of children to non-custodial parents, grandparents, and relatives are slowly evolving as state codes.

Through visitation enforcement and joint custody, children of divorce are permitted the love and guidance from those who loved them prior to the divorce. Grandparents now have guaranteed visitation rights, by state law or court decisions, in 45 states. Stepparents are fighting for similar rights (29).

A law establishing the venue for litigating child custody first became effective in 1968. The purpose of this law is to reduce child snatching in parents' attempts to find another county or state more favorable to their case than their own (30).

The pendulum of "favoritism" in divorce is swinging towards a more neutral position. Consider the issue of custody of minor children. Prior to 1910, women did not have the right to vote, few owned property, and job opportunities for women were scarce. Because women were without financial means and both women and children were considered as chattel of men, men were favored as the sole custodial parent (31). However, from the 1920's through the 1960's mothers were favored as the sole custodial parent under the "tender years" doctrine (32). Currently, more and more states are opting for a more neutral doctrine, that of joint custody.

The term "alimony" has been dropped by most states in favor of "spousal support," and it is now awarded on the basis of need, regardless of sex, rather than as a right (33).

The thrust of changing divorce-related laws is to make ex-spouses self supportive, independent, and equal with regard to equity in marital property and pensions. Likewise, the raising of children and paying their financial expenses are also headed in the direction of joint responsibility. However, all of the nation's legislators must be made aware of the thrust of these new laws and of the need in divorcing families for these equitable laws.

Child Support: By Administration or Litigation?

Consider the following: Most taxpayers do not object to filling out forms or to employing an accountant to compute their taxes. Computation is done by means of gross income, allowable expenses, and a formula. It would be ridiculous and immensely costly for the U.S. Government to drag every taxpayer into court in order to litigate the amount of taxes owed. Yet this very practice is employed by the divorce industry when establishing child-support payments.

Formulas and data exist regarding the cost of raising children. The state uses such information in order to compute the amount of payments given to foster parents for expenses of adopted children. Yet neither this administrative method nor other equitable formulas are used in the courts to determine child-support awards. Litigation as a means of establishing child support is another process in need of reform; it must yield to an administrative process (34).

Income Redistribution

In 1984, Congress asked the states to devise wage assignment statutes to assure the collection of court-ordered child support payments. Congress also asked the states to devise support guidelines by 1987 (35).

This action by Congress allows for the possibility of forceably equalizing incomes by taking it from one class, the non-custodial parent, and giving it to another, the custodial parent.

E.J. Espenshade estimates that low income families spend $75,000 rearing a child to its 18th year, middle class families spend about $82,000, and upper class families spend about $98,000 (36).

Two states which have income redistribution are Wisconsin and Delaware. Under the Wisconsin child support plan, 17 percent of a non-custodial parent's net income is paid to the custodial parent for the first child. The Melson formula is applied in Delaware and uses a complicated computation to arrive at an almost similar percentage.

In neither state is there a cap or limit to the percentage of the non-custodial parent's income that goes to child support.

If a non-custodial parent should earn $35,000, 17 percent of that would be $5,950. $5,950 paid over 18 years is equal to $107,100. According to Espenshade's figures, the custodial parent at the high income level would not be contributing anything to child's support, and would, moreover, have $9,100 in disposable income.

Yet state laws everywhere say that child support is a responsibility of both parents. The leading court cases indicate that the needs the child are food, clothing, shelter, and schooling, though add-ons could certainly occur, such as for day care, if needed.

Some leading cases (37) state that non-custodial parents are legally obligated to pay only for the reasonable expenses for raising their children. These expenses are food, clothing, shelter, and the necessities of life (Hood v Hood). The needs and financial status of both parents must be considered (Melzer v Witsberger).

In these and other cases the needs of the child determine the amount and the parents pay in relation to their respective ability to do so. Thus, if the needs of the child are, say $5,000 per year, and parent A has twice the net income as parent B, parent A will pay two-thirds of the $5,000 or $3,333.

The formula adopted by the Oregon supreme court in Smith v Smith seems the fairest because not only is it related to the cost of raising the child, but also it credits each parent with the amount of time the child spends with that parent.

By contrast, income redistribution is inequitable because there is no "need" determination, no accountability, and therefore no "cap" as to what the non-custodial parent pays. The non-custodial parent pays what the state orders, without regard to the child's needs.

Two Classes of Children

A major objection to income redistribution is that it will create two classes of children: children of the first marriage make up one class while children of a subsequent (and intact) marriage of the non-custodial parent make up the second class.

The children of a subsequent marriage can only obtain economic benefits from a parent if the parent agrees. No court can order the parent of an intact family to provide beyond the necessities. The parents of an intact marriage have the sole say as to how much they spend on their children. This is not so for the non-custodial parent. The non-custodial parent has no vote on how his or her court-ordered, child-support payments are spent.

Unlike children of a subsequent marriage, children of an earlier, dissolved marriage have a legal tie to their non-custodial parent's wallet. These children can go to court via the custodial parent to enforce their demands for more money whereas the other class of children cannot.

The children of dissolved marriages (through the custodial parents) do not have to provide accountability as to how money is spent. Children of intact marriages do.

Is the establishment of two classes of children good for children? What effect will income redistribution have on second families? Are we dealing with a radical change in public policy which should be subject to public debate rather than being slipped in under the guise of equitable child support?

Visitation Arrearage?

Studies show that the custodial parent denies visitation or interferes with visitation in about 50 percent of the scheduled visits (38). Denial of court-ordered visitation of these proportions is a national epidemic. Yet only a few states have addressed the child's need for enforced court-ordered visitation.

In the area of child-support enforcement there are federal, state, and county agencies that, working together, employ administrative and punitive means. Few of our nation's county or state agencies will investigate visitation complaints. Fewer will order the custodial parent to allow for make-up of visitation arrearage, as Michigan case workers do (39).

Should state and local agencies that enforce child-support awards also enforce child-visitation awards? Should a judge's order for visitation deserve the same respect as an order for support? Would non-custodial parents have more respect for support orders if custodial parents had more respect for visitation orders? Furthermore, the term "visitation" implies that the non-custodial parent is merely a visitor. "Child access" or another more appropriate term should be used in place of "visitation rights."

A New Look at Marriage and Dissolution

Prior to the advent of no-fault auto insurance, an American involved in an auto accident was in a similar situation of judicial crisis. Without laws that spelled out the responsibilities of accident victims and insurance companies, these victims found that they had to use the court-devised adversary system to resolve their disputes. Many victims of auto accidents soon became victims of unscrupulous attorneys as well.

After much public and institutional outcry and effort of advocacy groups most states enacted no-fault auto insurance. As a result, money from insurance claims went into the victims' pockets rather than to lawyers. Thus, reform was achieved and auto victims were not required to become adversaries of each other and not required to litigate.

During the past 20 years, more and more contracts have become consumer oriented: such contracts include lease agreements, purchase agreements, loans, and installment sales. State laws require that all provisions be clearly spelled out in large print and in non-legal, everyday terms. Also, the consumer has a right of recision within a specified time. Furthermore, state and county agencies are established to protect the consumer (40).

Should a 1-month marriage require the same form of litigation as does a 20-year marriage? Common sense says no, yet the courts say yes! Consumers have the automatic right to rescind other contracts within a specified period. Why not the right to rescind a marriage contract if spousal problems develop within six months and no children are born?

Upon dissolution of the marital contract, where children are born, federal, state and local agencies must protect children and families by establishment of administrative remedies. At present the federal government has empowered the Department of Health and Human Services to assist in the collection of child-support payments (41).

Similar assistance is needed to promote meaningful marriage contracts, child access ("visitation") enforcement, mediation, uniform and fair support orders, access to children's school records, joint custody, and many other divorce-related issues that affect children.

The Divorced Father--a Pathetic Image

Statistics show that the American father rarely gets custody of his minor children after divorce. Most state laws frustrate the male's attempt to gain custody (42). As a result many fathers perceive that the "system" is unjust, and they flee. Those who stay and cannot meet their child support payments end up in court. Reports about irresponsible fathers who flee or cannot meet support payments often appear in the media (43); they are portrayed as a disgrace to both society and their children. This adverse publicity leads many judges, as well as the public, to believe that most divorced fathers are uncaring.

The image of the American father is falsely based upon media reports of a minority who deny their children financial support: an estimated 25 percent of fathers who are under child-support court orders do not comply in any manner (44).

The public must be made aware of the 2.5 million divorced fathers who are financially responsible. They represent three times the number who pay nothing, and they pay an estimated 10 billion dollars in support annually (45). These fathers love their children, go through great pains to affect visitation, and are grieved by the separation from their children. Some fathers are even emotionally disabled as a result of the separation (46).

The typical American father is portrayed as "a Dagwood Bumstead, a well meaning idiot who is constantly outwitted by his children, his wife and even his dog" states a Temple University professor (47). After divorce, his image is further denigrated by the media.

By means of television, radio, and the printed word, the American father must be accurately portrayed; he is generally loving, caring, competent, protective, and financially responsible. This image must be projected across the nation in order that he gains the respect of his children, the courts, and the legislatures. Only by establishing this respect will the legislature and courts respond to the legal needs of the American father.

As one author states, "Maybe in time the men of the nation will tire of such emasculation and will let the offending parties know their feelings in no uncertain terms. Until it happens, though, the mass media's mass castration will proceed apace, and the contemporary American father will be ever more emphatically confirmed as a vestigial figure." (48)

Poverty and Amorphous Rage

Adversarial procedures rather than psychological, pastoral, or other conciliatory forms of marriage counseling often destabilize the troubled family (49).

Of the millions of parents who have consulted with attorneys, many are encouraged to shed their spouses through divorce. They are advised to seek a new life with unrealistic expectations of financial security and a more compatible spouse or partner (50).

Statistics show that married mothers who have become single-parent mothers have also become the fastest growing segment of the nation's new poor (51). Is the feminization of poverty linked to the feminization of custody?

As a result of unneeded and unwelcome divorce promoted by the divorce industry, millions of parents may have been unnecessarily separated from each other and from their children. Currently, more than 15 million children live in families where fathers are absent (52), with divorce being a major cause for the father's absence. Possibly a less adversarial process could have found a solution to their ailing marriages other than divorce.

The prospect of losing custody in our courts has motivated parents of 25,000 to 100,000 children to snatch their children each year (53), change names, and relocate (54). Thus, the tragedy of divorce is compounded through sole-custody awards.

Millions of divorced women have discovered that they possess useless separation agreements. These agreements awarded them sole custody of minor children and promised financial security through court-ordered support payments. Ex-husbands with no custodial rights have vanished rather than pay, leaving mothers penniless and children fatherless (55). On the other hand, fathers with court-awarded parental responsibility often "stay and pay" (56). It stands to reason that when the parents are around, so are their wallets.

Many people hope that new federal and state laws providing for wage assignment, liens, and federal and state tax intercepts, will radically improve child support collections. Children, however, need more than financial support, as important as financial support is.

There is a growing body of evidence that children, girls as well as boys, are psychologically and socially damaged in fatherless homes(57). One study indicated that "...in divorced families, contact with additional adult caretakers was associated with positive social behaviors shown by the child..." (58).

Other studies showed that children, lacking a father's guidance, are unable to cope. Many never complete high school. Some children parent unwanted children. Some turn to drugs, some run away and are declared as "missing," and others turn to crime or suicide (59). A Professor of psychohistory states that "...a vast army of sociopaths...bred in fatherless homes and filled with boundless and amorphous rage for which they are not to blame...will overrun this land..." (60). This trend must be reversed. The father's role as a nurturing parent must be acknowledged by society and protected and encouraged by our courts.

Contempt for Parents!

Contempt for parents is manifested by the:

- lack of visitation enforcement,
- difficulty non-custodial parents have in obtaining school records,
- encouragment of low income fathers to leave home so as to increase welfare benefits to the head of household,
- courts ignoring the non-material contributions that divorced fathers give to their children,
- lack of due process in alleged child abuse cases to deny a non-custodial parent visitation rights,
- courts ignoring the pleadings of a fit parent for joint custody,
- legislatures ignoring psychological evidence that divorced parents (regardless of gender) are competent in childraisin and
- courts ignoring the Biblical advice that a child should love and obey his or her father and mother (61)

"When a father seeks a rich and continuing relationship with his children after divorce, male lawyers, judges and psychotherapists sometimes react with suspicion, derision or hostility....By having to go on the offensive to obtain a shared parenting arrangement men frequently become cast into the role of troublemakers when for many their intention is to continue a co-parenting role they established within the marriage family. When women oppose joint custody arrangements, they are less likely to be seen as trouble makers and their views less often challenged..." states a prominent author (62).

Although there is a wealth of evidence that single fathers are competent at childrearing (63), many courts are reluctant to act on this evidence. The denial of a fit father to continue to parent after divorce has caused many of them to be angered by our justice system, depressed by the loss of a loved one, and distraught by the inability to share their lives with their children.

For those fathers who prefer visitation instead of custody and are denied visitation by the custodial parent, the courts will rarely enforce a visitation agreement (64). In addition, schools often frustrate the father's access to his child's school records (65). Furthermore, the Federal Parent Locator Service (FPLS) will not assist the non-custodial parent in locating an ex-spouse in the event that the ex-spouse vanishes with a child; the FPLS is used to locate only non-custodial parents.

Fathers of low income families often "leave" their homes to enable their spouses to qualify for welfare payments as the head of a "fatherless" home. The family's total income is then increased by adding the welfare payment to the father's contribution (66). With this definition of a "fatherless" home and its resulting financial reward, the government is discouraging fatherhood.

Unlike other debts which may be litigated in civil courts, child support arises out of a court order. Thus, a father who is behind in his child support payment violates a court order which is a criminal act, and is subject to imprisonment (67). No other class of debtors, such as those owing consumer debts or owing Federal taxes, are so harshly treated.

Many of these fathers were unemployed and were unable to support their families during marriage. Now that they are divorced, some are harrased for being poor and are arrested as criminals.

The fact that many of these fathers are providing essential emotional support and non-material contributions for their children will not be considered by the courts as reason to diminish their prison sentences.

All states have enacted laws that penalize the financially irresponsible father, yet no states have laws that encourage fatherhood after divorce, that encourage fathers to make support payments (68), that encourage fathers to visit and to raise their own children (69), that penalize an ex-spouse who alleges child abuse in order to deny visitation, or that credits divorced fathers with contributions to their children that are non-material.

In 1978, the right of a fit father to continue to parent after divorce was upheld as a constitutionally guaranteed right by the Supreme Court (70). As a result of this decision and an increase in state joint-custody laws, more and more fathers realize that they do not have to give up their children upon divorce.

With an estimated 2.5 million fathers who pay billions of dollars yearly in child support, with over 200 grass roots divorce reform groups throughout the nation, and with the thrust of new laws, fathers now have the clout to demand that the public and lawmakers respect and encourage fatherhood, as much as motherhood, for the sake of our children.

From a Mother's Knot to a Mother Not: Non-Custodial Mothers

About one-fifth of all American families with children are single parent households. Twelve percent of the single parent households are headed by fathers. This means that an estimated 848,000 mothers do not live with their children (71).

"What's wrong with you, mother, that you did not get custody?" is a question often asked of divorced mothers who do not have custody of their children. Society assumes that a mother without custody is unfit, and it often stigmatizes a women whose knot with her children becomes untied.

Not only does society pass a negative judgement, but the mother without custody often judges herself harshly for not being a mother.

Dr. Geoffrey Grief, an assistant professor of the University of Maryland School of Social Work and Community Planning believes guilt to be "more pronunced" among non-custodial mothers than among non-custodial fathers (72). "It's clear that these (non-custodial) mothers' expectations of themselves and society's expectation of them are different than fathers. Fathers are expected to be fathers without custody."

When one talks to non-custodial mothers, one often finds the same concerns that non-custodial fathers have: problems with lack of access to the children, difficulty in paying support, and loss of control.

Thus, even if Federal Laws required an "affirmative action" program whereby fathers were given sole custody in 50 percent of all cases nationwide, children of divorce would still suffer; they would have only one active parent, and the child would be deprived of the other parent.

Although fathers are being awarded sole custody in an increasing number of cases, should children of divorce be disassociated from their mothers?

Abuse of Child Abuse Laws

Unfortunately, many children are the victims of mental and physical abuse. They may be abused at home by parents, step-parents, and other family members or by strangers outside of the home. This is a deplorable situation and must be ended. The neutral grounds of the school allow school personnel to identify an abused child. These children should be encouraged to articulate such experiences in this safe enviornment and steps should be taken to end the abuse.

On the other hand, there are fathers who are denied custody or visitation rights by being falsely accused of child molestation (73). A leading proponent of men's issues has observed the following (74):

> "It is difficult enough for fathers to gain equal access to childrearing opportunities; the divorce process amounts to affirmative opposition by the government...Predictably, it is the children who are suffering far more from father deprivation than from father molestation."

"Just as men fought to maintain dominance as workers, women are fighting to maintain dominance as parents. Accusations of child molesting have become one of their more effective weapons in this battle. It is important, then, not to allow a justifiable concern about abuse be exploited as a scare tactic by those who seek to maintain their monopoly of power over raising children."

"There is a surprisingly fine line between molestation and healthy parent-child physical contact. Because of our sexist heritage, we tend to draw the line more narrowly for fathers than for mothers. A mother who playfully rubs her nose on her baby's tummy while changing a diaper would be considered an affectionate mother. A father who did so, however, could be accused of molestation by a hostile ex-wife...and barring a vigorous defense by the father, she could make those charges stick. Even with a vigorous and successful defense by the father, it could be a long time before his visitation rights were restored."

Child abuse should not be tolerated and neither should the abuse of child abuse laws.

Who Pays?

The volume of divorce-related lawsuits has increased rapidly during the 1970's and early 1980's while the duration of lawsuits is also on the upswing (75). The result is a backlog of cases, delays in litigation, and a lack of timely solutions.

Cases concerning the needs of children have become exceedingly complex, and their resolution often takes months and even years. Meanwhile, the child is growing while his or her needs have been put on hold by the court. Solutions, when finally adjudicated, are either unexpected or inappropriate.

Not only does the victim of divorce pay his immediate legal costs, but both the victim and the public bear court costs and many hidden costs (76).

If the custodial parent's income is below the poverty level, taxes are increased to cover additional welfare and aid-to-families-with-dependent-children (AFDC) payments (77). More social workers, investigators, and administrators are also hired, and more government buildings are needed to house them, all at the taxpayers' expense (78).

When spouses divorce, especially as adversaries, the financial burden of raising their children is shifted, in full or in part, to the state, and hence to the taxpayer. Is it not time for taxpayers to realize they are paying for ineffective laws, an inefficient dispute resolution system, and the problems of children of divorce?

Implementing Reform

In summary, a combination of outdated marital and divorce laws, contempt for parenthood, and the adversarial system result in the victimization of children through divorce.

The public's image of the divorced American father and the concept of fatherhood must be improved. Motherhood must be encouraged in both intact and divorced familes and must not end with divorce. A parent's image must be correctly portrayed as loving and caring, regardless of marital status, for the benefit of our children. Parenthood must gain the respect of the courts and lawmakers.

Furthermore, the public must be made aware that children of divorce need a close relationship with both their fathers and mothers in order to develop as socially responsible adults.

Our marriage contracts, pre-marital agreements, and related marital laws are obsolete. They do not permit prospective marriage partners to consider or to elect terms of dissolution. Prospective marriage partners are not prepared to handle the issues that arise from divorce, nor are they aware of an alternative to the adversarial system. Thus, when a marriage fails, issues of property, custody, and support are belatedly litigated in a court of law with spouses as adversaries.

If any industry turned out a product that had a 50-percent failure rate, as does the institution of marriage, then consumers would be alarmed and insist upon a government investigation and sweeping changes. Is not the American marriage in that condition today?

"Because (the rate of divorce is likely to increase), it is important that parents and children be realistically prepared for the problems associated with divorce that they may encounter.... Divorce is one of the most serious crises in contemporary American life. It is a major social responsiblity to develop support systems for the divorced family in coping with changes associated with divorce and in finding means of modifying or eliminating the deleterious after-effects of divorce..." states a researcher of the effects of divorce on children (79).

The National Council for Children's Rights identified the following divorce-related laws that are in need of reform, and believes that such reform will eliminate the deleterious after effects of divorce on children while helping to end the crisis in family law.

LAWS REGARDING	OBJECTIVE OF REFORM
dispute resolution	o required mediation preferred to an adversarial forum
child support	o based on need and the reasonable cost of raising a child
	o parents pay according to their ability, by formula, with credits for visitation
custody of minor children	o awarded jointly to both parents as a first preference if both parents are fit
visitation (child access)	o liberally granted to non-custodial parents, grandparents, and relatives
	o state or local enforcement with make-up of visitation arrearages

Also, marital property and pensions should be equitably distributed, and marriage contracts should permit the terms of dissolution to be spelled out prior to marriage.

In addition to laws, an educational program is needed to inform the public on issues and responsibilities of marriage, parenting, and divorce. Should this educational process begin in our public schools rather than in our courts?

The National Council Takes the Initiative

The National Council for Children's Rights was established by divorced parents in 1984 to take the initiative for reforming family law on a national level. Our goal is to ease the burden that divorce places on our children.

The National Council is developing an affiliation with over 200 concerned organizations throughout the United States. Many of these are "grass roots" organizations that provide services to divorced parents and seek divorce reform on a county and state level. Others offer expertise and model legislation in areas of, for example, joint custody, child locating services, and visitation enforcement.

Primarily, they provide much-needed legal and emotional assistance to children of divorce and to ex-spouses. Many groups have lobbied at the state level to reform family law in order to assist victims of divorce. The National Council supports these local groups by providing a variety of services and a voice in our nation's capital.

The National Council is a non-profit, tax exempt organization that offers advocacy, seminars, and informational and educational services in all issues related to the reform of custody and divorce law.

REFERENCES AND NOTES

1. Attacking Litigation Costs and Delay: Action Commission to Reduce Court Costs and Delay, American Bar Association, 1800 M Street N.W., Washington DC 20036, 1984, p 1.

2. Ted Gest, "Divorce - How the Game is Played," U.S. News and World Report, November 21, 1983, Professor Sanford Katz of Boston College Law School is reported as saying that divorce litigation now constitutes almost 50 percent of civil filings in the United States, p 39.

3. Harvey Seymour, Consumer News, Insurance Information Institute, 110 William St., New York, NY 10038, Oct. 15, 1984. p 3. This source reports 12 million civil filings per year. The Justice Assistance News, Vol 5. No. 7, reports 13 million cases per year.

4. United States Department of Commerce, Statistical Abstract of The United States 1984, 104th Edition. Table No. 120, "Marriages and Divorces: 1950 to 1980" lists 393,000 divorces in the United States in 1960 and 1,189,000 divorces in 1980. This gives an increase in the divorce rate by a factor of 3.025 from 1960 to 1980.

5. Op. cit., Statistical Abstract of The United States 1984, Table No. 83 "Live Births, Deaths, Marriages, and Divorces: 1910 to 1982." Using a value of 1,180,000 divorces per year for 1982 and 365.25 days per year yields 2.24 divorces per minute.

6. Op. cit., Statistical Abstract of The United States 1984, Table No. 120 "Marriages and Divorces: 1950 to 1980" lists a median duration of marriage of 6.8 years for the years 1979 and 1980.

7. Op.cit., Harvey Seymour. p 3. The author states that the number of lawyers in the United States increased 106 percent from 1970 to 1984. (During the same period, the population increased by about 15 percent.) The numbers of lawyers practicing family law are not given.

8. Ibid., The number of children involved in divorce (with 30 or fewer states reporting) are given as .870 million for 1970, 1.123 million for 1975, and 1.174 million for 1980.

9. Donald G. Alexander, Justice Superior Court, Some Thoughts on Child Custody Actions in the Courts, Superior Court, 95 State St., Augusta, ME 04330. ca 1983, p 2.

10. Professor Geoffrey C. Hazard, Jr., Ethics in the Practice of Law, Yale Law School, 1978 "...The adversary system has deep roots in Anglo-American legal tradition. Its antecedent is often said to be the Norman trial by battle, wherein issues in doubt were resolved by the outcome of a duel...."

11. Op. cit., Donald G. Alexander, p 1.

> "...as child custody matters are addressed, four goals would appear preeminent...
>
> "1. To provide parental direction...
> "2. To preserve a meaningful relationship between the child and each parent.
> "3. To promote responsible communications between the separated parents regarding the interests of the child, and
> "4. To achieve stability for the child ...
>
> "The current court and litigation-focused system for addressing child custody disputes is often antagonistic to all of these goals. It frequently serves to antagonize and polarize already difficult relationships between the parents."

12. Lawrence Freedman, Legislation on Dispute Resolution: Special Committee on Dispute Resolution, Monograph Series-No. 2, American Bar Association, 1800 M Street N.W., Washington DC 20036, 1984, p i.

13. Warren E. Burger, Justice, U.S. Supreme Court. From a speech delivered to the American Bar Association, Washington, DC, 1984.

14. Susan J. Tolchin, Professor of Public Administration at the George Washington University in Washington, DC and Martin Tolchin congressional correspondent in the Washington Bureau of The New York Times. Dismantling America: The Rush to Deregulate, 1983. On page 20 the authors discuss the adversarial relationship (which underlies our legal system) of the regulatory process. It appears that their view of the modus operandi of lawyers applies to domestic relations as well as others forms of legal practice.

15. Attorneys' annual fees for divorces were estimated by multiplying the following three factors: 1,189,000 divorces per year (1980 data), 2 spouses represented assuming each requires 6 hours of attorneys' time, and an average attorney's billing rate of $70.00 per hour.

This gives a conservative lower limit estimate of $998,760,000 annually, or about one billion dollars in legal fees nationwide. The average cost is $840.00 per divorcing couple.

Attorney's fees were obtained from the ABA Journal, The Lawyer's Magazine, Volume 70, October 1984. Lauren Rubenstein Reskin reports in "Law Poll" that partner billing rates range from $90 to $134 per hour, while associate billing rates range from $59 to $87 per hour.

"What Fathers Tell Us," The Squire, Kansas City, June 14, 1984. This article reports statistics from a survey of 168 divorced fathers gathered by Divorced Dads, Inc. 9229 Ward Parkway, Kansas City, MO 64114. The average legal fees for all fathers was $5,545.00, with 53 percent of the fathers paying for their ex-spouses as well. For those fathers who sought sole custody, their average legal costs were $17,323. Using $5,545 per divorce multiplied by 1,189,000 divorces per year gives an upper limit of $6,593,005,000 annual legal fees, for divorce and custody, nationwide.

16. Op. cit., Lawrence Freedman, page 1 reports the following laws specifically on family and divorce mediation:

Alaska	Child Custody Act	88 SLA	1982
California	Family Conciliation Court Law	SB 961	1980
Florida	Dissolution of Marriage Act	82-96	1982
Michigan	Friend of the Court Act	HB 4870-1	1982
Oregon	Custody Mediation Act	HB 2362	1983

Note that the Maine Act, HP 1696 of 1984 amends Sec 1. 19 Main Revised Statutes Annotated, c. 17, "Marital Dissolution, Annulment or Separation" to provide for conciliators as appointed by the Governor. In 1985, Delaware was also added to this list.

17. Pearson and Thoennes, Mediating and Litigating Custody Disputes: A Longitudinal Evaluation, Center for Policy Research, Denver, CO, presented at the state legislature's Child Support Enforcement Conference, June 1983. The authors' report that

- A sixty percent agreement rate was achieved in mediation.
- Ninety percent of those mediating were pleased with the process, whether or not they reached agreement, as compared with fifty percent who were satisfied with the court process.
- Mediation was perceived as fair and just.
- Mediation reduces polarization for those with some minimal ability to cooperate.
- Relitigation was rare among mediation clients.

18. Op. cit., Lawrence Freedman, p 297

19. Ibid.

20. Op. cit., Ted Gest, "A New Age of Prenuptial Agreements." p 41.

Note: During 1985, Virginia took a major step in permitting a term of marital dissolution to be agreed upon before marriage. Senate Bill 518 was introduced to amend the Code of Virginia by adding in Title 20 a chapter numbered 8 to establish the "Premarital Agreement Act." This Act, permits among other things, that spousal support may be included in a premarital agreement. However, for this act to be effective, it must be reenacted prior to July 1, 1986.

21. Uniform Marriage and Divorce Act, National Conference of Commissioners on Uniform State Laws, 645 N. Michigan Ave., Chicago, IL 60637, August 1-7, 1970, with amendments of August 27, 1971, and August 2, 1973. A comment on page 32 by the commissioners implies that, at best, the courts will only permit the terms of dissolution to be agreed upon by divorcing spouses after the marriage fails, and not at the time the marriage contract is signed. The comment reads

> "An important aspect of the effort to reduce the adversary trappings of marital dissolution is the attempt...to encourage the parties to reach an amicable disposition of the financial and other incidents of their marriage. This section (No. 306) entirely reverses the older view that property settlement agreements are against public policy because they tend to promote divorce. Rather, when a marriage has broken down irretrievably, public policy will be served by allowing the parties to plan their future by agreeing upon a disposition of their property, their maintenance, and the support, custody, and visitation of their children."

22. Ibid., p 32.

> "The terms of the agreement respecting support, custody, and visitation of children are not binding upon the court even if these terms are not unconscionable. The court should perform its duty to provide for the children...."

23. James A. Cook, President of the Joint Custody Association, 10606 Wilkins Ave, Los Angeles, CA 90024, reports in a December 1, 1984 news release that

> "Joint custody is continuing to gain strength around the country. It is already law in 31 states, and is the presumption or preference in 11 of those states."

Since Cook's report, two additional states were added.

Also see Jay Folberg, Joint Custody and Shared Parenting, Bureau of National Affairs (BNA) Books, 9435 Key West Ave., Rockville MD 30850-3397. BNA publishes information regarding recent changes in custody laws and court decisions.

24. John P McCahey, J.D., LL.M, et al., Child Custody & Visitation Law and Practice, Mathew Bender, New York, Volume 3, 1983, Section 10.02 states

> "The tender years doctrine embodies a presumption that it is usually in the best interests of young, especially female, children, to be placed in the custody of their mother. Although this doctrine has been largely discredited today as based upon outmoded sex-role stereotypes, it is still influential in some states, even where statutes provide that parents have an equal claim to custody."

25. Op. Cit., Ted Gest, "Fights Over Furniture, Pensions and Pets", p 40.

26. Ibid.

27. New York Times, a report on a ruling of the New York Court of Appeals in Michael O'Brien V. Loretta O'Brien on December 26 1985. December 27, 1985. Page 1.

28. Recent state and federal laws that govern child support collection include: The Uniform Reciprocal Enforcement of Support Act (URESA) enforces support orders when more than one state is involved. Mandatory income withholding was legalized by the Child Support Enforcement Amendments of 1983 to Part D of Title IV of the Social Security Act and becomes effective in 1985.

29. Op. cit., Ted Gest, p 45.

30. Establishing jurisdiction in custody cases is covered by the Uniform Child Custody Jurisdiction Act, promulgated by a Conference in 1968. However, language that establishes venue when children are removed from a jurisdiction appears in the federal Parental Kidnapping Prevention Act (PKPA) of 1980, PL96-611.

31. P. Woolley, The Custody Handbook 257, 1979. The author states that

> "Up until the nineteenth century, English common law gave the father absolute custodial rights over the children as against the mother." and
>
> "The Chancery, acting on behalf of the king's parens patriae authority, interfered with the father's custody only in cases of gross parental abuse."

32. Op. cit., John P. McCahey.

33. Op. cit., Ted Gest, "Why Alimony is on the Ropes," p 39.

34. Many courts use tabular guidelines for establishing support payments, including the Los Angeles County Superior Court and Family Law Department (Guidelines for Initial Order to Show Cause) and the State of Maine (Child Support Enforcement Manual). However, these guidelines are only implemented by court orders after litigation rather than used in the administrative process.

35. In 1984, congress passed the Child Support Enforcement Amendment, Federal Law No. 98-378, which requires states to establish wage assignment, leins, and tax intercepts. States were also asked to devise guidelines for child support by 1987. In 1985, governors of each state established commissions that addressed visitation and custody matters.

36. E.J. Espenshade, Urban Istitute, Washington, D.C., "Investing In Children", 1984.

37. Cases involving legal obligations of non-custodial parents include: Smith v Smith, 626 P 2d 342 (OR 1981), Hood v Hood, 335 N.W. 2d 349 (SD 1983), Melzer v Witsberger, 480 A 2d 991 (PA 1984), and Rand v Rand, 392 A. 2d 1149 (MD 1978).

38. Judith S. Wallerstein and Joan Berlin Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce, Basic Books, New York, 1980. On page 125 the authors state

> "Perhaps half of the mothers valued the father's continued contact with his children, and protected the contact with care and consideration. One-fifth saw no value in this whatsoever and actively tried to sabotage the meetings by sending the children away just before the father's arrival, by insisting that the child was ill or had pressing homework to do, by making a scene, or by leaving the children with the husband and disappearing. In between was a large group of women who had many mixed feelings about the father's visits.....These irritations were expressed in their difficulties in accommodating the different schedules of the other parent to make the visit possible and to protect the child's access to both parents, in forgotten appointments, in insistence on rigid schedules for the visits, in refusal to permit the visit if the father brought along an adult friend-in thousand mischievous, mostly petty, devices designed to humiliate the visiting parent and to deprecate him in the eyes of his children."

39. Editorial, "Justice for Both Parents," The Washington Post, November 30, 1985, p A26.

40. Check you local telephone directory for consumer agencies. For example, the Northern Virginia C&P Telephone Directory, 1984, lists several consumer agencies: the Federal Consumer Product Safety Commission and County and City Consumer Affairs offices.

41. National Child Support Enforcement Reference Center, U.S. Department of Health and Human Services, Child Support Report, Vol. V, No. 7, Oct. 1983. Twenty-one states are reported to have agreed to use the National Parent Locator Service (NPLS) in order to locate parents who are delinquent in their child support payments. Today, the number of states using the NPLS is considerably greater.

For the collection of child support, the U.S. Department of Health and Human Services runs the Office of child Support Enforcement, 6110 Executive Blvd., Rockville, MD 20852. They encourage each state's Title IV-D agencies to provide state child support enforcement agencies direct computer access to Department of Labor files. In this manner, obligor parents who owe child support payments may be located by means of their social security number. Pay checks and tax refunds are intercepted by the appropriate state agencies as payment against arrearage.

42. Op. cit., John P. McCahey. In section 13.01 the author states:

> "Currently, in 90 percent of all disputed custody proceedings the mother is awarded sole custody of the children. Typically, the custodial parent is considered the "victor" in these disputes." (From Bratt, Joint Custody, 67 Ky. L.J. 271, 274, 1978)

43. Gail Diane Cox, "New Emphasis on Prosecution in Child Support Cases," The Los Angeles Daily Journal, Feb. 22, 1983.

> "Extra radio cars, new court forms, intruction sheets, computer equipment, and even slogan buttons -- the Los Angeles district attorney's office isn't kidding about its new emphasis on (criminaly) prosecuting rather than suing those who fail to pay child support."

44. American Child Custody Alliance, 9299 Ward Pkwy, Kansas City, MO 64114 Number 1, September 1983. J.D. Paradise, President, reports that child support order compliance runs about 70 percent to 75 percent, depending on source.

Total noncompliance runs from 25 percent to 30 percent. Thus, those who comply with support, partially or fully, outnumber those who do not by about 3 to 1.

In addition, the percentage of noncompliance should be reduced to reflect those fathers who are unemployed, alcholic, etc., and who did not support their families during marriage. Paradise's sources are:

> Disadvantaged Women and Their Children, The U.S. Commission on Civil Rights, May, 1983. This report states that "roughly one-quarter received no payments...." p 12. Thus partial and full compliance is equal to 75 percent.
>
> Demographic Statistics in Child Support Enforcement, The National Conference on State Legislatures, November 1982. It is reported that "25 percent got less than the full amount due and 28 percent received nothing...." Thus partial and full compliance is equal to 72 percent.
>
> Trends in Child Custody and Support, Editorial Research Reports, March 1982. "According to the latest Census Bureau Information, some 3.4 million single mothers were due child support ...but only about 2.5 million actually received payments." Thus, partial and full compliance is equal to 73.5 percent.

Op. cit., Judith S. Wallerstein and Joan Berlin Kelly. On page 185, the authors give statistics that reflect fathers' compliance with support orders more favorably.

> "The majority of fathers (68 percent) had made their child support payments with considerable regularity. An additional 19 percent paid some support, but irregularly and in varying amounts. Only 13 percent were completely delinquent. Fathers were significantly more likely to be delinquent in child support payments when their own psychological function was not stable. In fact, the psychological stability of the father was a more powerful predictor of continued child suport payments than socioeconomic status, although lower-class fathers were more often delinquent than middle- or upper-class men."

45. Op. cit., Statistical Abstract of The United States 1984. Table No. 658 "Child Support and Alimony-Child Care" lists a mean child support payment of $2,106. However, 2,902,000 women received payment. This gives an estimated total of at least 6.112 billion dollars paid by responsible fathers (it is not clear whether or not the mean support payment is per child or per family).

However, a higher estimate of support payments made by fathers is obtained from Divorced Dads, Inc. They report that the average obligor pays $409 per month, or $4,908 per year. If this represents a nationwide average, then the total amount that responsible fathers contribute to 2.9 million ex-spouses would be 14.23 billion dollars annually.

46. Memmer V Memmer, Law No. 45503, Fairfax County, VA, 1980. As a case in point consider Memmer's mental injury. Memmer's former wife repeadedly thwarted his efforts to visit his three daughters despite court ordered visitation. His frustration affected his ability to concentrate on his work and led to high blood pressure, loneliness, isolation, and depression. He was awarded $25,000 by a jury of four women and three men as damages for emotional stress caused by his former spouse.

47. Myron Brenton, The American Male, Fawcett Publications, Inc, Greenwich, CT, 1966. This comment appeared in an article by Jhan and June Robbins, "Why Young Husbands Feel Trapped, Redbook, March 1962. p 127.

48. Ibid. An observation by Myron Brenton. p 128.

49. Donald G. Alexander, Superior Court Justice, Maine, "Divorce and Child Custody," Maine Times, ME, April 13, 1984.

> "A process that calls itself 'adversary,' promotes 'confrontation,' labels the other party a 'hostile witness,' and ultimately produces a 'winner' and a 'loser,' could not be worse for resolving how two separating parents will continue to have the best possible relationship with their child...."

50. Op. cit. Statistical Abstract of The United States 1984. Table No. 120 "Marriages and Divorces: 1950 to 1980" lists the rate of remarriages of divorced women as 91.3 per 1,000 and lists the divorce rate for women as 22.6 per 1,000 (women over 15 years of age during 1980). The remarriage rate exceeds the divorce rate by a factor of over 4. The implication is that second and third marriages marriages.

Andrew Carlan, "What Joint Custody Means to Fathers: A Bitter Injustic Newsday, July 31, 1984. The author states

> "...Wives are twice as likely as their husbands to break up families. In the old days, the man left; today he is thrown out!"

51. Op. cit., Ted Gest, "Divorce - How the Game is Played."

Op. Cit., Statistical Abstract of the United States 1984. Table No 779 "Persons Below Poverty Level: 1959 to 1981." In families with a female householder, no husband present, the number below the poverty level increased from 13.5 million in 1979 to 15.7 million in 1981.

52. President Ronald Reagan, "A Proclamation," Child Support Report, Special Issue, August 1983.

53. "Federal Parent Locator Services Used for Parental Kidnapping," Child Support Report, Vol. V, No. 7, Oct. 1983.

54. Andrew Carlan, "What Joint Custody Means to Fathers: A Bitter Injustice," Newsday, July 31, 1984. Mr. Carlan hypothesizes that

> "If the ex-wife gets exclusive custody, fathers will see that these women 'enjoy' its corollary: full responsibility. 'Support them. I'll simply disappear,' fathers will say. The spread of poverty and welfare to former middle-class families now headed by divorced women who heard 'the call of the wild' will reach such proportions that the unconcerned taxpayer will begin to heed the cry of fathers for justice."

55. Ibid.

56. Dr. Howard H. Irving, Faculty, School of Social Welfare, University of Toronto, Canada. "Shared Parenting: An Emperical Analysis Utilizing a Large Canadian Base," Joint Custody and Shared Parenting. Jay Folberg, Editor. BNA, 1984. Dr. Irving studied 200 sets of joint custody parents. He found that the child support default rate of fathers with joint custody was about one-tenth that of the default rate of fathers who did not have custody.

57. There are many studies that discuss the psychological and sociological damage of children from broken homes. A few are listed below, and each gives reference to further studies.

Richard A. Warshak, Ph.D., Department of Psychiatry, Southwestern Medical School, University of Texas Health Science Center at Dallas. "Custody Disposition and Children's Personality Development," Presented at the Institute on Joint Custody: Current Research, Clinical and Legal Issues. J.B. Kelly (Chair), annual meeting of the American Orthopsychiatric Association, New York, 1981.

Op. cit., Wallerstein and Kelly

John W. Santrock, Richard A. Warshak, and Gary L. Elliott, "Social Development and Parent-Child Interaction in Father-Custody and Stepmother Families, Nontraditional Families: Parenting and Child Development, Michael E. Lamb, Ed, Lawrence Erlbaum Associates, 1982.

E. Mavis Hetherington, Martha Cox, and Roger Cox, "Divorced Fathers," The Family Coordinator, Oct 1976. p 417.

E. Mavis Hetherington, Martha Cox, and Rodger Cox, "The Aftermath of Divorce," Mother/Child, Father/Child Relations, Joseph H. Stevens, Jr., and Marilyn Mathews, Eds, National Association for Education of Young Children, Washington, DC. 1978.

Denis K. Orthner and Ken Lewis, "Evidence of Single-Father Competence in Childrearing," Family Law Quarterly, Vol. XIII, Number 1, Spring 1979.

58. John W.Santrock and Richard A. Warshak, University of Texas at Dallas, "Father Custody and Social Development in Boys and Girls," Journal of Social Issues, Vol. 35, No. 4, 1979. p 112.

59. Felicia Lee, "1-parent kids may suffer as adults," U.S. Today, Oct. 1, 1984.

> "Adults who grew up in single-parent homes are more likely to be divorced, have a child out of wedlock, earn less money, use illegal drugs, and receive help for emotional problems than adults from two-parent families, a new study finds."
>
> "The study, by sociologist Daniel P. Mueller and assistant Philip W. Cooper of the Amherst H. Wilder Foundation, is the first to examine the long-term impact of growing up with one parent."

June Bucy, Director of the National Network of Runaway and Youth Services, Washington D.C. states that

> "Ninety-five percent of the nation's 1,000,000 children missing each year are runaways. Many have been rejected by both their mothers and their fathers. We need to encourage greater parental involvement."

60. Dr. Stanley Page, Professor of Russian history and psychohistory at the City University of New York, "Fatherless families spawning virulent form of child abuse," New York Tribune, June 6, 1984. Dr. Page writes

> "A large category of those suffering from (child abuse) are the children of fatherless homes, in which, as the latest census figures reveal, 11 million children are growing up. The homes lacking a father are, obviously, mostly the product of our out-of-control divorce epidemic....Having opted for divorce as the solution to family and marital problems, our society has created a built-in child-destroying machine. And since there is not, as yet, even the proposal of an idea for remedying the inevitably resultant distortion of the child-father relationship, we can be confident that the seeds of a vast army of sociopaths have been sown. Bred in fatherless homes and filled with boundless and amorphous rage for which they are not to blame, they will overrun this land. They are sure to make it even more uninhabitable for peace-loving citizenry already troubled by major breakdown in morality and by all manner of rampant vice and criminality."

61. The Holy Bible, K.J.V., Deut. 5:16

62. Joan Berlin Kelly, Ph.D., "Examining Resistance to Joint Custody", transcript of presentation at the conference "Patterns and Perspectives: The 21st Century Family," Association of Family and Conciliation Courts, May 20, 1982.

Judith Brown Greif, D.S.W, "Fathers, Children and Joint Custody," American Journal of Orthopsychiatry, Vol. 49, No. 2, April 1979. Dr Greif's views on page 319, expressed at an earlier date, are similar to Dr. Kelly's views.

> "Although there appears to be widespread opposition to joint custody, none of the concerns expressed have been validated by research. In fact there is a growing literature of joint parenting that documents the positive effects such arrangements have on parents and children alike....Children need active involvement of both parents, and the findings clearly indicate that fathers with joint custody are most likely to have a high degree of influence on their children's growth and development."

63. Ibid.

Op. cit., Richard A. Warshak and John W. Santrock.
Op. cit., Dennis K. Orthner and Ken Lewis.
Op. cit., Judith S. Wallerstein and Joan Berlin Kelly.

64. Divorce reform groups throughout the nation report that the two most needed laws for the protection of child-parent rights relate to (1) a rebuttable preference for joint custody, and (2) the enforcement of court-ordered visitation.

65. Elsa Walsh, "After Divorce Schools Balk at Double Reports," Washington Post, Nov 17, 1984. p A1.

> "Educators, sympathetic to the pain surrounding a broken marriage, nonetheless argue that requests by divorced parents (for two reports) are, at times, far more burdensome and time-consuming than any educational reform ever has been....In some cases, parents even run into trouble getting copies of their children's grades, despite...federal law...."

66. Children's Defense Fund, 122 C Street, N.W., Washington, D.C. Private communication with a spokeswoman. Dec. 4, 1984.

67. Op. cit., Gail Diane Cox.

Robert E. Kroll, "Dealing With a Lack of Support," The Register: Close-Up, Orange County, CA., Nov. 19, 1984. "Orange County's aggressive program aims to make delinquent parents pay, but its critics call it a costly harassment of the poor," and, "Orange County's approach: jail for non-payment."

68. Prior to 1985, a noncustodial parent who contributed more than one-half of child rearing costs received a tax exemption for that child. In 1985, the custodial parent became entitled to the tax exemption, unless a court order or agreement exists between ex-spouses to the contrary. The obligor's love for his child is probably the only incentive for making support payments. Court actions, garnishments, and prison sentences are seen by fathers as threats and not incentives.

69. If state and federal laws encouraged fatherhood for divorced fathers over 200 grass roots fathers' rights, children's rights, and divorce reform organizations throughtout the United States would have no need to exist.

70. Justice Marshall, writing for the Court, said that a divorced father could not be treated differently from a father who is married and still living with his child. Quilloin V. Walcott, 434 U.S. 246, 1978. p 255. For a more complete study on constitutional rights of fathers see:

> Ellen Canacakos, "Joint Custody As A Fundamental Right," Arizona Law Review, University of Arizona Law College, Tucson AZ 85721, Vol. 23, No. 2, 1981, and
>
> Holly L. Robinson, Esq. University of Cincinatti Law Review, 1985.
> The author concludes that because states deny the parental rights to retain custody of one's children after divorce a federal law should be adopted to protect this fundemantal, constitutional right.

71. Op. cit., Statistical Abstract of the United States 1984

72. Geoffrey Grief, Ph.D., "Mothers Without Custody and Child Support," Journal of Family Relations, January 1986

73. Sharon La Franiere, "Child Abuse Reports Often False," The Washington Post, November 13, 1984.

74. Private communication from Fredric Hayward, President, Men's Rights, Inc. PO Box 163180, Sacremento, CA 95816, 1984.

75. Op. cit., "Attacking Litigation Costs and Delay." Although the referenced ABA study on the duration of law suits covers all forms of civil justice, family law represents about one-half of of these cases.

76. Op. cit., Dr. Stanley Page. Dr. Page states:

> "The problem of child abuse (mostly from fatherless homes) is finally emerging from the closet as a topic of wide-spread concern. Reports of cases are on the rise, as are measures designed to curb this evil. A provision in New York City's 1985 budget, for instance, allows the recruitment of many more social workers assigned to protect the innocent victims of beatings and incest."

77. Op. cit., Statistical Abstract of the United States 1984, Table No 656 "Aid to Families With Dependent Children (AFDC)" shows that the number of recipient families increased from 3,420,000 million in 1975 to 3,428,000 in 1979.

78. Op. cit., Robert E. Kroll. The writer states that:

> "Prosecutors in other (California) counties say criminal charges are an expensive, inefficient way to get the job (of collecting child-support payments) done ....Generally (criminal enforcements) don't pay you any money. They are not productive to the system...It drives up administrative costs for the courts, the probation officers, and jails...."

79. Op. cit., Hetherington, Martha Cox, and Roger Cox, "The Aftermath of Divorce." p 175.